

The Gardea Law Firm, P.C.

Dania R. Gardea
Attorney At Law
129 W. Willoughby Ave.,
Las Cruces, NM 88005
(575)993-5963 Office □ (575)993-5964 Fax



December 20, 2017

USPS Tort Claims

Attn: Cynthia Wood
P.O. Box 62230
Phoenix, AZ 85082-2230
(602) 225-3938



Via US Mail

Re: Claim #: 850-16-0474A
Injured Party: Karen Rawers
Date of Loss: 04/05/2016

Dear Ms. Wood:

As you are aware, this office represents Ms. Karen Rawers in a personal claim for damages resulting from a motor vehicle accident on April 5, 2016.

SCENE:

On Tuesday, April 5, 2016, at approximately 4:50 pm, Ms. Karen Rawers was the restrained driver in a vehicle traveling eastbound on Hoagland Road approaching Chateau Drive. Your insured, Ms. Clarissa Skinnerramp, stated she was stopped at a stop sign facing northbound on Chateau Drive. Ms. Skinnerramp stated she looked both ways but did not see Ms. Rawers' vehicle. Ms. Rawers stated she attempted to brake but was unable to avoid contact with Ms. Skinnerramp's vehicle.

Ms. Rawers complained of lower back pain and was transported by ambulance to the hospital.

Ms. Skinnerramp was cited for failing to yield after stop.

INVESTIGATION:

Ms. Karen Rawers stated she was headed eastbound on Hoagland Road approaching Chateau Drive. She stated that Ms. Clarissa Skinnerramp pulled out from Chateau Drive headed northbound. She stated she then attempted to brake but was unable to avoid contact. Ms. Rawers complained of lower back pain and was transported by ambulance to hospital.

Ms. Clarissa Skinnerramp stated that she stopped at stop sign and began to cross intersection headed northbound. She stated that she looked both ways but did not see Ms. Rawers' vehicle.

She had no complaints of injuries on scene.

Ms. Skinnerramp was cited for **FAILED TO YIELD AFTER STOP**.

See previously provided copy of State of New Mexico Uniform Crash Report, Exhibit A.

PERSONAL INJURIES:

Ms. Karen Rawers was transported by American Medical Response to the Memorial Medical Center Emergency Room from the accident scene. Ms. Rawers complained of low back pain. Ms. Rawers was diagnosed and treated as follows:

- **Diagnosis:**
 - Muscle spasm of back
 - Degenerative disc disease cervical spine
- **Radiology:**
 - CT Lumbar Spine w/o Contrast
 - Neck CT w/o Contrast
- **Medications:**
 - Hydrocodone-Acetaminophen 10-325 mg Oral Tablet
 - Ibuprofen 800 mg Oral Tablet

Ms. Rawers was discharged the same evening with instructions for arthritis and nonspecific muscle cramps and spasms.

On April 12, 2016, Ms. Rawers presented herself to Health Care Solutions to be evaluated for headache. Onset was one week ago. The location is primarily occipital. The pain radiates to the periorbital area. Ms. Rawers denies having significant prior headaches. She characterizes it as moderate in severity. She denies any associated symptoms. She reports onset since an MVA one week ago.

Ms. Rawers presents with myalgias, unspecified. It began 1 week ago. It is of severe intensity. She estimates that the frequency of this symptom is daily. The typical duration of an episode is the majority of the day. There are no obvious aggravating factors. Symptoms are relieved with narcotic pain medications and NSAIDs. There are no associated symptoms. She reports sharp increase in pain stemming from an MVA one week ago. She reports increase in muscle spasms.

Ms. Rawers was examined and diagnosed as follows:

- **Diagnosis:**
 - Vascular Headache, not elsewhere classified
 - Myalgia

- **Exam:**
 - General: seems to be in moderate pain
- **Assessments:**
 - Headache
 - Myalgias, unspecified
- **Plan:**
 - Recommendations given include: massage therapy
 - Referrals: Referral initiated to physical therapy (at LC Comp Rehab)
 - Follow-Up: Schedule follow-up appointments on p.r.n. basis. Schedule a follow-up appointment in 2 weeks

Ms. Karen Rawers presented herself to Health Care Solutions for seven more visits to follow up on her injuries. On August 31, 2016, The physician noted:

“PT here to F/U pain management of chronic low back pain after reinjury in MVA 4 months ago; at the same time she aggravated cervical DDD; the accident also disrupted the leads to implanted nerve stimulator... without medication PT’s pain is as high as 10/10 with medication and use of stimulator (degraded by accident) is 4-6/10.”

On September 29, 2016, Ms. Rawers’ physician noted:

“she is here for regular F/U pain management for her chronic low back pain after reinjury in MVA 7 months ago, at that time she also aggravated cervical DDD; that accident disrupted the leads to her previously implanted nerve stimulator placed by Dr. Davis in California.”

Her final visit was on November 17, 2016. Ms. Rawers was referred to Las Cruces Pain Center for further treatment.

On April 18, 2016, Ms. Karen Rawers presented herself to Las Cruces Comprehensive Rehab for an initial examination. She was diagnosed and treated as follows:

- **Diagnosis:**
 - Cervicalgia
 - Headache
- **History of Present Condition/Mechanism of Injury:**
 - MVA T Bone
- **Primary Concern/Chief Complaint:**
 - Pain/Headaches constant
- **Cervical AROM:**
 - Forward Bending 75°
 - Backward Bending 50°

- Right Rotation 50°
- Left Rotation 50°
- Right Side Bending 50°
- Left Side Bending 50°

- **Palpation:**

- Palpable tenderness or increased muscular tone noted.
- Right SCM Tender with increased tissue tension
- Left SCM Tender with increased tissue tension
- Right Scalenes Tender with increased tissue tension
- Left Scalenes Tender with increased tissue tension
- Right Suboccipital Myofascia Tender with increased tissue tension
- Left Suboccipital Myofascia Tender with increased tissue tension
- Right Cervical Paraspinals Tender with increased tissue tension
- Left Cervical Paraspinals Tender with increased tissue tension
- Right Levator Scapula Tender with increased tissue tension
- Left Levator Scapula Tender with increased tissue tension

- **Assessment:**

- Assessment/Diagnosis: Cervical spine MS guarding decreased AROM, point tenderness, headaches. Following the evaluation and extensive education regarding diagnosis, prognosis, and treatment goals, the patient actively participated in the creation of the current goals and agrees to the current treatment plan.
- Rehab Potential: Good
- Patient Problems: Cervical pain Limited AROM MS/Guarding
Frontal area headaches constant
ADL and functional tasks limitations
- Short Term Goals: (4 Weeks) Abolish Pain achieve FROM and 4+/5 stability strength
(4 Weeks) Abolish Headaches
(4 Weeks) Abolish MS and trigger points
- Procedures: Therapeutic Exercises, Therapeutic Activity, Neuromuscular Rehabilitation, Manual Therapy, Patient Education
- Modalities: To Improve (Pain relief, Decrease Inflammation, Increase Blood Flow, Improve Tissue Healing), Electrical Stimulation, Hot Packs

Ms. Karen Rawers returned for physical therapy with Las Cruces Comprehensive Rehab for 8 more visits. She was discharged on May 13, 2016, because she was leaving town for further consult, goals partially met.

On May 18, 2016, Ms. Karen Rawers was sent to Neurology Associates of Mesilla Valley for a neurologic evaluation. She has left leg pain and weakness. She reports having an accident. Now, patient is having headaches and neck pain. She reports some neck pain and stiffness. She has chronic lower back pain. Her symptoms have been in the left leg.

- **Assessment:**

- Causalgia of left lower extremity

- Chronic radicular pain of lower back
- Transient left leg weakness
- Neck pain

On December 7, 2016, Ms. Karen Rawers presented herself to Las Cruces Pain Center for consultation as requested by Dr. Stefan Schaffer of Health Care Solutions. Ms. Rawers reason for visit was low back pain. Due to the progressive pain, the patient has difficulty with ambulation and completing several activities of daily living and underwent placement of a dorsal column stimulator, which greatly alleviated her symptoms. However, she was recently involved in a motor vehicle accident in which the lead migrated and now provides limited coverage of her pain.

Lower Back: The pain is described numb, twisting, nagging. Onset and Severity: insidious, Severe. The radiation of the pain is constant, to the left lower extremities, to the toes.

Neurology: Myalgia in lower back. Paresthesia constant.. left lower extremities down to the toes. Weakness in: left leg, to the toes.

Pain Management: The pain interferes with General Activity. The pain is aggravated by physical activity. The pain is associated with fatigue.

The patient was administered the extended "Screener and Opioid Assessment for Patients in Pain (SOAPP).

- **Assessment:**
 - Low back Pain
 - Chronic pain syndrome
 - Myalgia
 - Anxiety disorder, unspecified
 - Postlaminectomy syndrome, not elsewhere classified
 - Long term (current) use of opiate analgesic
- **General Examination:**
 - Musculoskeletal: diffuse tenderness to palpation in cervical and thoracic spine with paraspinal bilateral spasms, hypertrophied right thoracic musculature with palpable scoliotic curvature
 - Tenderness to deep palpation at left trochanteric bursa
 - Decreased sensation to light touch in left lower extremity in dermatomal distribution of L4-S1, left plantar and dorsiflexion weakness
- **Detailed Lower Back:**
 - Inspection: Lumbar spine bilateral spasms
 - Palpation: severe tenderness to deep palpation in lumbar spine and bilateral paraspinal musculature
 - Range of Motion: flexion 15 degrees and extension degrees limited due to pain, normal rotation with pain on extremes of motion

- Straight leg raising: positive bilaterally, with radicular symptoms
- **Prescriptions:**
 - Tramadol HCl tablet 50 MG Orally
 - Fentanyl Patch 72 Hour 25 MCG/HR Transdermal
 - Lyrica 100mg Capsule Orally
 - Zanaflex Tablet 4 MG Orally

A baseline laboratory evaluation was ordered. Due to the Ms. Rawers lack of coverage, Las Cruces Pain Center sent a referral for Psychiatric evaluation for Stimulator trial to identify the proper site for placement of stimulator prior to revision. The facility also attempted one more reprogramming session with their local representative.

Ms. Karen Rawers presented to Las Cruces Pain Center a total of 4 times for treatment related to her injuries. February 21, 2017 was the final visit.

Ms. Karen Rawers presented to New Dawn Psychotherapy on February 17, 2017, as a candidate for the BurstDR Stimulator. She currently has a spinal cord stimulator which was placed three years ago in the state of California. Her pain site starts at the left side of her pelvis and travels down to her toes. Ms. Rawers has had multiple back injuries but the most recent occurred when she was hit by a postal truck in April 2016. She describes her pain as constant and rates it at an average of 8, out of a 10 point scale.

Ms. Rawers experiences sleep disturbances caused by her back pain. She reports obtaining 4-4.5 hours of sleep a night as a result of her needing to shift into different positions to alleviate her pain.

The Back Depression Inventory indicates client is bordering on clinical depression. The mood disturbance appears to be situational and related to her pain and does determine a need for therapeutic interventions. The Stress Profile indicates client possesses health resources in her strong social network, making active attempts to change her environment and cognitive processing. These are all factors that would increase client's success with the Spinal Cord Stimulator implant.

Ms. Karen Rawers has a strong desire to regain physical mobility and return to daily activities without pain.

Ms. Rawers presented to Memorial Bone and Joint Center on July 17, 2017 with chief complaint of Back Neurostimulator. She was referred for a revision of an implanted neurostimulator lead and generator.

- **Assessment:**
 - Complication of implanted electronic neurostimulator of spinal cord, initial encounter
 - Chronic pain due to trauma
 - Intervertebral disc disorder with radiculopathy, lumbar region
 - Status post laminectomy with spinal fusion

- Pre-operative examination
- **Imaging:**
 - X-RAY EXAM OF LOWER SPINE
 - X-RAY EXAM OF THORACIC SPINE

Ms. Karen Rawers presented to Memorial Medical Center on August 1, 2017 for surgical revision and replacement of neurostimulator epidural paddle lead and revision of neurostimulator pulse generator:

- **Preoperative Diagnoses:**
 - Complication of implanted neurostimulator system-DX
 - Chronic Pain-DX
 - Intervertebral lumbar disk disorder with radiculopathy-DX
- **Postoperative Diagnoses:**
 - Complication of implanted neurostimulator system-DX
 - Chronic Pain-DX
 - Intervertebral lumbar disk disorder with radiculopathy-DX
- **Procedures Performed:**
 - Revision and replacement of neurostimulator epidural paddle lead-CPT
 - Revision of neurostimulator pulse generator system-CPT
- **Findings:**
 - The pulse generator pocket was cultured and closed. A new pocket was created above (cephalad) to the old pocket. Final placement x-rays were satisfactory. The assistant aided in the exposure of the leads and the redo laminectomy, to retrieve and replace the new paddle lead. The assistant used a Cobb elevator during the approach and the suction device as the leads were retrieved.
- **Specimens Removed:**
 - The generator systems and leads were removed with the epidural paddle lead.

On August 17, 2017, Ms. Rawers called Memorial Bone and Joint Center with concerns about her incision. Staples were removed in the office on August 11, 2017. Ms. Rawers states the incision might have opened because she has some oozing. She noticed blood on her sheets and on her shirt on the back. Ms. Rawers was advised to go to the Emergency Room if the oozing gets worse.

Ms. Rawers reported to the Memorial Medical Center Emergency Room later that day for post op possible infection. Steri strips were applied.

- **Diagnoses:**
 - Revision and replacement of neurostimulator epidural paddle lead-CPT
 - Revision of neurostimulator pulse generator system-CPT

On August 18, 2017, Ms. Rawers complained to Memorial Bone and Joint Center of having a reaction to Keflex. Started with itching and now has hives, itchy throat and clogged ears.

On August 21, 2017, Ms. Rawers presented to MMC Wound Care Center for care of her opened incision. She was treated as follows:

- **Primary Wound Dressing:**
 - Wound #1 Midline Back: Apply Calcium Alginate with silver to wound bed – Filled Tunnel of 3cm at 12 o'clock.
- **Secondary Dressing:**
 - Wound #1 Midline Back: -ABD pads secured with Mepilex tape.
- **Additional Orders/Instructions:**
 - Other: - Finish the Cipro
- **Home Health:**
 - Wound #1 Midline Back: Admit to Home Health for Skilled Nursing – Established Agency: see orders.
- **Laboratory:**
 - Bacteria identified in Wound by Culture – Convenience Name: Wound culture routine.

Ms. Rawers presented to Memorial Wound Care Center for treatment a total of 5 times. On September 18, 2017, she was discharged with instructions to call the facility if further services are needed.

On August 30, 2017, Ms. Rawers presented to MMC ER for encounter for attention to dressings, sutures and drains.

Ms. Karen Rawers was unable to leave her home due to medical restrictions after her surgery. Her physician instructed her to make herself homebound until the sutures are removed from her incision site. Skilled Nurses with Las Cruces Home Care provided care for Ms. Rawers. Start of care began on August 3, 2017 and ended on September 13, 2017. The Diagnosis and Skilled Nursing procedures were as follows:

- **Medications:**
 - Fentanyl 25 mcg/hr Transdermal Film. Extended Release Change every 72 hrs Transdermal (TD) N
 - Percocet 5/325 Oral Tablet every 8 hrs PRN pain By mouth (PO) N
- **Principal Diagnosis:**
 - Displacement of implnt nstim. generator, subs

- Surgical Procedure
- Encounter for adjust and management of unsp implanted device
- **DME and Supplies:**
 - ABD's
 - Dressing Supplies
 - Exam Gloves
 - Gauze Pads
- **Safety Measures:**
 - Fall Precautions
 - Keep Pathway clear
 - Safety in ADLs
 - Standard
- **Orders for Discipline and Treatments:**
 - SN to assess pain level and effectiveness of pain medications and current pain management therapy every visit
 - SN to instruct patient on nonpharmacologic pain relief measures, including relaxation techniques, massage, stretching, positioning, and hot/cold packs
 - SN to report to physician if patient experiences pain level greater than 6, pain medications not effective, patient unable to tolerate pain medications, pain affecting ability to perform patient's normal activities
 - SN to perform/instruct on wound care as follows: Remove old dressings and cleanse incision with wound cleanser, pat dry with a 4x4 gauze sponge then cover with xeroform gauze, ½ of ABD pad, then covered with tegaderm. Change dressing PRN with when wet or soiled
 - SN to instruct the Patient/Caregiver on signs/symptoms of wound infection to report to physician, to include increased temp ≥ 100.5 , chills, increase in drainage, foul odor, redness, pain and any other significant changes. May discontinue wound care when wound(s) have healed
 - SN to assess wound for S&S of infection, healing status, wound deterioration, and complications.
 - SN to assess O2 saturation on room air (freq) each visit. Report to physician O2 saturation less than 90%
 - SN to instruct patient to change positions slowly
 - SN to instruct the Patient/Caregiver to remove clutter from home.
- **Goals/Rehabilitation Potential/Discharge Plans:**
 - The Patient will have no hospitalizations during the episode
 - Patient will verbalize understanding of proper use of pain medication by the end of the episode
 - PT/CG will verbalize knowledge of pain medication regimen and pain relief measures by the end of the episode
 - Wounds will heal without complication by the end of episode

- Neuro status will be within normal limits and free of S&S of complications or further deterioration
 - The patient will be free from falls during the episode
 - The patient will be free from injury during the episode
 - Patient will remain free of adverse medication reactions during the episode
 - Rehab Potential: Good for stated goals
 - Discharge Plan: Patient to be discharged to Self care. Discharge when goals met. Discharge when wound(s) healed
- **Other Diagnosis:**
 - Other chronic pain
 - Person injured in unsp motor-vehicle acc, traffic, sequela
 - Vis def/sptl nglet following cerebral infection

Ms. Karen Rawers was discharged from home health services effective September 18, 2017. Wound healed.

PROPERTY DAMAGE:

Ms. Rawers utilizes a service dog, Orom, to help prevent falls, pulling her forward, going up/down stairs, picking up items, etc. Orom, was a crated passenger in Ms. Karen Rawers vehicle during the accident. The crate was bolted to the car.

Ms. Karen Rawers presented Orom to Arroyo Veterinary Clinic on April 7, 2016 due to yelping following the motor vehicle accident. Orom was examined and treated as follows:

- **Exam:**
 - Pain and Muscle spasms in lumbar spine
- **Diagnosis:**
 - Soft tissue trauma.
- **Prescriptions:**
 - Methocarb 500 mg #30
 - Tramadol 50 mg #30
 - Deramaxx 75mg #10

Ms. Rawers returned Orom to Arroyo Veterinary Clinic on April 13, 2016 for a recheck. D.V.M. Melissa A. Jones noted:

“doesn’t sleep in same position as before. Maybe uncomfortable?”
“Still has mild pain in mid-lumbar region – cont pain meds. Recommend chiro adjustment w/ Dr. Miller in Alamogordo.”

Ms. Rawers presented Orom to Ark Animal Hospital in Alamogordo, NM, on April 19, 2016. For a chiro exam and adjustment. Orom was examined and treated as follows:

- **Radiology:**
 - X-Ray (14 x 17)
 - X-Ray (14 x 17 add. View)
- **Professional Services:**
 - Chiro Exam & Adjustment

Ms. Rawers returned Orom to Ark Animal Hospital on April 28, 2016, for a follow up chiro exam. Ms. Rawers reports that Orom walks better:

- **Professional Services:**
 - Chiro Follow-Up Multi

Ms. Karen Rawers vehicle, a 2007 Toyota Rav 4, received damage to the entire front end and required repairs as follows that are listed in the included Estimate and Invoice from The Body Works, LLC.

See enclosed copies of available Medical and Miscellaneous Records, Exhibit B.

Please be advised that Ms. Rawers requires further surgical procedures due to the disrupted leads to her implanted nerve stimulator. To adhere to timely filing of this claim, billing for MMC Wound Care Center and some aftercare Emergency Room visits are not included. These, and any other missing medical bills have been requested and will be provided upon receipt. Ms. Rawers will most certainly be left with residual recurrent symptoms and anticipates continued pain and suffering as a result of these injuries. I am writing this letter to completely outline the claims of our client and to propose terms of settlement.

See enclosed copies of Medical and Miscellaneous Billings, Exhibit C.

CONCLUSION:

It is evident that Ms. Karen Rawers was an innocent driver when your insured, Clarissa Skinnerramp pulled out in front of her, causing the motor vehicle accident. All facts relevant to the incident support this claim.

Investigating officers at the scene attribute all aspects of this incident to be the fault of your insured, as she failed to yield after stopping, for which she was cited.

As a result of Ms. Karen Rawers' injuries, she suffered pain, suffering, emotional distress and loss of enjoyment of life.

ITEMIZED BREAKDOWN OF PERSONAL INJURY DAMAGES

AMERICAN MEDICAL RESPONSE	\$ 803.34
MEMORIAL MEDICAL CENTER 4/5/2016	8,927.96
LAS CRUCES EMERGENCY MED ASSOC INC	700.00
VIRTUAL RADIOLOGIC	424.00
LAS CRUCES PAIN CENTER	2,675.00
LAS CRUCES COMPREHENSIVE REHAB	2,555.00
NEUROLOGY ASSOCIATES OF MESILLA VALLEY	220.00
HEALTH CARE SOLUTIONS	3,507.00
NEW DAWN PSYCHOTHERAPY	165.00
MEMORIAL BONE AND JOINT CENTER	3,389.60
MEMORIAL MEDICAL CENTER 8/1/2017	121,973.38
MEMORIAL MEDICAL CENTER 8/17 2017	676.50
LAS CRUCES HOME CARE	11,410.96
PAIN AND SUFFERING	<u>787,138.70</u>

TOTAL PERSONAL INJURY DAMAGES \$ 944,566.44

ITEMIZED BREAKDOWN OF PROPERTY DAMAGES

ARK ANIMAL HOSPITAL	\$ 220.70
ARROYO VETERINARY CLINIC	168.42
PRESCRIPTIONS (OROM)	62.88
PAIN AND SUFFERING	2,260.00
VEHICLE REPAIR	<u>5,901.51</u>

TOTAL PROPERTY DAMAGES \$ 8,613.51

TOTAL DAMAGES \$ 953,179.95

On behalf of my client, Ms. Karen Rawers, and based on the above information, we hereby demand **\$ 953,179.95** in full settlement of all claims that we have against your insured. Liability is clear as your insured was cited for **FAILING TO YIELD AFTER STOP**, causing the collision with my client, and disrupting the leads to her implanted nerve stimulator. We believe that this figure accurately and fairly reflects the damage and losses sustained by my client as a result of your insured's negligence.

This offer will remain open for fourteen (14) days from the date of this letter. If the offer of settlement is not accepted within that time period, the offer will be automatically withdrawn and we will proceed to file a claim in the local district court, at which time the full extent of our client's damages will be requested which will likely exceed policy limits.

Please give me a call if you have any questions. I look forward to your response.

Sincerely,

/s/

Dania R. Gardea